

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 8
Mtg. Date March 6, 2018
Dept. City Manager's Office

Item Title: Overview of Tobacco Retailer Licensing Program Provisions

Staff Contact: Miranda Evans, Management Analyst

Recommendation:

Staff recommends that the City Council:

- 1) Review the draft Tobacco Retailer Licensing Program provisions, and
- 2) Provide direction to staff regarding the provisions, proposed project timeline and implementation plan.

Item Summary:

At the May 9, 2017 City Council Goal Setting Workshop, the City Council identified the implementation of a Tobacco Retailer Licensing Program as one of their top priorities in addressing public safety and improving quality of life for Lemon Grove residents. In accordance with this directive, staff has begun the process of researching and creating a Tobacco Retailer Licensing Program for the City. Staff's report (**Attachment A**) includes background information on state and local Tobacco Retail Licensing Programs, tobacco use information, an overview of regulations from San Diego County jurisdictions, program provisions, a proposed timeline, implementation plan and program cost.

Feedback from the City Council on the draft program provisions, timeline and implementation is requested for staff to move forward.

Fiscal Impact:

The Tobacco Retailer Licensing Program will include a fee structure that will cover the cost of license administration and yearly compliance checks by the San Diego County Sheriff's Department.

Environmental Review:

☒ Not subject to review

☐ Negative Declaration

☐ Exempt

☐ Mitigated Negative Declaration

Public Information:

☒ None

☐ Newsletter article

☐ Tribal Government Consultation Request

☐ Notice published in local newspaper

☐ Notice to property owners within 500 ft.

Attachments:

A. Staff Report

B. State of California Tobacco Product Pictorial

Attachment A

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 8

Mtg. Date | March 6, 2018

Item Title: | **Overview of Tobacco Retailer Licensing Program Provisions** |

Staff Contact: | Miranda Evans, Management Analyst

Background:

At the May 9, 2017 City Council Goal Setting Workshop, the City Council identified the implementation of a Tobacco Retailer Licensing Program as one of their top priorities in addressing public safety and improving quality of life for Lemon Grove residents. In accordance with this directive, staff has begun the process of researching and creating a Tobacco Retailer Licensing (TRL) Program for the City. Feedback from the City Council on the draft program provisions, timeline and implementation is requested for staff to move forward and return to the City Council at a later date with a draft ordinance.

As of January 1, 2017, all tobacco retailers are required to apply for a retail license with the state of California for a fee of \$265. The fee must be paid and the license renewed on an annual basis. All retailers selling tobacco products (**Attachment B**), including those selling e-cigarettes only, must participate in the licensing program. Prior to this legislation, the state's licensing requirements only applied to retailers selling traditional tobacco and required a one-time \$100 fee. The state's tobacco retail licensing program is primarily intended to target and fund the enforcement of cigarette tax evasion and black market sales. The state's program does not fund enforcement of minimum age to purchase and does not include any provisions to further regulate tobacco sales.

Although the state requires a license to sell tobacco products, the state licensing law is not designed to reduce illegal sales to minors by retailers. To meet that need, over 120 California cities and counties have adopted local TRL programs in addition to the State's licensing requirement. This special license is issued by a city or county to a business selling tobacco products and is aimed at ensuring that licensees are aware of certain eligibility requirements and performance standards.

Discussion:

In the United States, over 480,000 people die from tobacco-related diseases every year¹, making tobacco use the nation's leading cause of preventable death. Cigarettes and other tobacco product sales are very lucrative and are usually the top items sold in convenience stores. According to data from the National Association of Convenience Stores, the average convenience store nationwide generated over \$600,000 in sales from cigarettes alone, accounting for roughly 36% of all sales in those stores in 2016. While cigarette sales continue to decrease, the use of other tobacco products (especially e-cigarettes) is steadily increasing among youth due to product innovation and the shift from combustible tobacco products to other forms of tobacco.

Tobacco Troubles

E-cigarette use among U.S. youth and young adults is now a major public health concern. E-cigarette use has increased considerably in recent years, growing an astounding 900% among high school students from 2011 to 2015. These products are now the most commonly used form

¹ United States Department of Health and Human Services Surgeon General 2015 Report.

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of tobacco among youth in the United States, surpassing conventional tobacco products, such as cigarettes, cigars, chewing tobacco, and hookahs.² It is notable that hookah lounges are prohibited in the City.

Local data from the California Healthy Kids Survey of 7th graders in Lemon Grove School District³ revealed that 5% of seventh graders tried electronic smoking devices. Although there are no high school districts in Lemon Grove, available data indicates that among East County 11th grade students, 4% smoked cigarettes in the past 30 days and 11% used e-cigarettes in the past 30 days. 60% of these students believe cigarettes are “fairly easy/very easy to obtain.” According to the Centers for Disease Control, nearly 9 out of 10 smokers started smoking and began their tobacco addiction by age 18.

At this time, Lemon Grove has approximately 31 tobacco retailers⁴ from a variety of retail uses including, but not limited to, convenience stores and gas stations, grocery stores, smoke shops and liquor stores. The City has a high concentration of tobacco sales establishments within the Broadway commercial corridor, but a low concentration in the remaining areas of the City. While the California statewide average for sales to youth is 10.3%, Lemon Grove’s sales rates have historically been significantly higher.

According to Youth Tobacco Purchase Surveys conducted by Community Action Service & Advocacy (CASA), survey findings revealed that in 2014, 39% of tobacco retailers in Lemon Grove sold tobacco products illegally to youth, including e-cigarettes. In 2015, 41% made illegal sales using the same survey protocol. These results were despite retailer education visits to each store conducted one to two weeks prior to each of these surveys.

As of June 9, 2016, individuals must now be at least 21 years old to purchase any tobacco products, including e-cigarettes. The only exception to this rule is for active duty military personnel who may purchase such products if they are 18 years old and have military identification. Following adoption of Tobacco21, a young adult tobacco purchase survey was conducted in Lemon Grove during April 2017. Also prior to that survey, retailer education materials were hand-delivered to all stores in the City. Even so, 31% of stores still sold tobacco products, both cigarettes and e-cigarettes, illegally to youth surveyors under 21 years of age.

San Diego County Jurisdiction Regulations

In San Diego County, the following five cities currently have TRL ordinances in place: El Cajon (2004), San Diego (2007), San Marcos (2016), Solana Beach (2009) and Vista (2005). Of the five cities, El Cajon, San Marcos and Vista are considered by tobacco control organizations to be the most effective due to their regular compliance checks. Compliance checks must review the following: existing tobacco laws regulating underage sales, compliance with identification and signage requirements in accordance with the STAKE Act and prohibiting sales of drug paraphernalia (as defined by state law). An overview of the program details for each San Diego County jurisdiction with an adopted ordinance are outlined in the matrix on the following page. Additional program details will also be included in Staff’s subsequent report.

² *E-Cigarette Use Among Youth and Young Adults*. 2016. Vivek H. Murthy, M.D., M.B.A. U.S. Surgeon General.

³ 2014-2015 California Healthy Kids Survey data

⁴ 31 tobacco retailers equates to 1.2 retailers per 1,000 population which is the highest ratio among the five San Diego County cities with a TRL ordinance.

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Overview of San Diego County Tobacco Retailer Licensing Programs

Jurisdiction	Year Approved	Municipal Code Section	Annual License Cost	Enforcement Agency	Number of Retailers	Retailers per 1,000 Population
City of El Cajon	June 2004	ECMC 8.33	\$675	Code Enforcement Officers (2) and CASA	114	1.1
City of San Diego	November 2007	SDMC 3.3.45	\$132*	San Diego Police Department	1,144	.9
City of San Marcos	July 2016	SMMC 5.55	\$189.50	San Diego Sheriff's Department	55	.6
City of Solana Beach	July 2009	SBMC 6.17	\$110	City Code Compliance Officer	7	.5
City of Vista	May 2005	VMC 3.56	\$250	San Diego County Sheriff's Department	72	.7

* includes \$56 application fee in addition to the \$132 license fee

Program Provisions

20 years of research throughout California reveals that effective TRL Programs have annual fees adequate to support all program costs and require annual compliance checks. In addition, some ordinances include additional retailer incentives for those with exemplary performance during annual compliance checks. Violations, documented illegal sales to minors, result in fines and penalties such as mandated periods of license suspension, up to and including the revocation of their license to sell tobacco products.

Staff recommends the City Council pursue an effective, research-based TRL ordinance with the addition of incentives for retailers with exemplary performance. Such an ordinance offers retailers who comply with licensing requirements and pass compliance checks discounts on their annual TRL license fee. For example, fee reductions may result from compliance with the following items: no tobacco violations on the previous year's compliance check, no tobacco advertising on store windows or doors, electronic age verification at the point of sale, compliance with state-required age of sale signage at each point of sale and employee tobacco retailing education programs. Under this model, penalties for violations may include fines in lieu of license suspensions that are much more costly to the business, but with revocations for multi-year repeat offenders. Should a license be suspended or revoked, the ordinance will set forth an appeal process to allow for an impartial review.

This approach is modeled after the City of Vista's ordinance that has been in place for over a decade. This model, later adopted by San Marcos in 2016, was created to lower youth smoking

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rates, reduce youth access to tobacco, educate the community on the issues of illegal tobacco sales to youth and help create a safer and healthier environment. Prior to the adoption of Vista's ordinance, the youth sales rate was 39%. This figure decreased significantly to 1.9% following the adoption of their ordinance⁵.

Proposed Timeline and Implementation Plan

Should the City Council wish to move forward with the recommended incentive-based TRL model, a comprehensive project timeline is outlined below.

- March – April 2018: Using feedback obtained from the March 6, 2018 City Council meeting, staff will draft the TRL ordinance.
- March 20, 2018: Staff will return to the City Council with the grant project proposal and application for Proposition 56 grant funding. The grant submittal deadline is March 23, 2018.
- April – May 2018: Staff will return to present a draft of the ordinance to the City Council.
- April – May 2018: Staff will begin the public outreach plan to educate the community and tobacco stakeholders.
- May 2018: Two community meetings are planned to allow a constructive venue for the public to ask questions, share concerns and provide input regarding the proposed TRL program. Meeting times will be staggered with one meeting in the morning and one during the evening to accommodate different schedules.
- May 2018: Letters will be sent out to all Lemon Grove tobacco industry stakeholders including local tobacco business owners and managers (approximately 31 retailers) to invite them to a separate industry specific meeting. They will also be invited to attend the two previous community meetings.
- June 2018: Staff will present a summary of the community outreach results along with a draft ordinance to the City Council.
- June – July 2018: Staff will present the ordinance to City Council for its second reading.
- July 2018: TRL Program implementation can begin at the onset of Fiscal Year 2018-19. Staff recommends a 6-month phase-in period to synchronize the TRL license process with the business license renewal process which is on a calendar year schedule. Tobacco Retail Licenses will be required in addition to the required City Business License. Complete implementation details will be provided when staff returns with the draft ordinance.

Fiscal Impact:

As with the other five San Diego County jurisdictions with a TRL Program, Lemon Grove's program will be created with a self-sustaining license fee that will completely cover the cost of the program administration and enforcement costs incurred by the San Diego County Sheriff's Department Lemon Grove Substation. Staff anticipates TRL costs to be similar to the City of San Marcos and the City of Vista, ranging between \$189.50 - \$250, and will return with a fee estimate that will cover the administration of the license and enforcement through yearly compliance checks. The goal is to provide a discount that incentivizes compliance, but still allows the City to cover all of the direct costs paid to the Sheriff's Department for inspections. It is essential that the

⁵ September 2013 data from the Cater for Tobacco Policy & Organizing

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fee structure stay within the confines of Proposition 26 which mandates that the City cannot recover more revenue than the cost of implementing the program.

Proposition 56 Grant Funding Opportunity

In November 2016, California voters approved Proposition 56 which increased the excise tax for tobacco products sold in the State. Thirty million dollars of the projected annual revenue is to be distributed annually to local law enforcement agencies through a grant program to support enforcement of certain state and local tobacco laws. In January 2018, staff became aware of this opportunity and identified it as an implementation measure for the proposed TRL Program. In accordance with the State Budget Act and Proposition 56, the grant program guidelines require that only local law enforcement agencies within the State of California are eligible to receive funds. As such, only local agencies with enforcement authority for tobacco-related state laws may apply. City staff will take a supporting role in creating and submitting the project proposal and if funding is awarded, will assist with the grant implementation, management and reporting.

Agencies selected as award recipients will be funded for up to 25 months with the program expiring on June 30, 2020. Staff's proposal will include a request to cover the additional law enforcement that is needed for the TRL enforcement. Staff will return to City Council at the subsequent meeting for formal approval of the grant proposal, due on March 23, 2018.

Public Information:

A robust public outreach plan will be implemented during the public information phase of this project. Public outreach will include the following communication methods through various platforms and will occur as outlined in the proposed project timeline on page 6:

- Update of information and project announcement on the City's website homepage and tobacco retailer information subpage,
- News release and social media information campaign on Facebook, Instagram, Twitter and YouTube,
- East County Californian notice,
- Individual letters sent to each Lemon Grove tobacco retailer, and
- Coordination with the San Diego County Sheriff's Lemon Grove Substation.

In addition to sharing information through the above mentioned methods, three community meetings are planned as detailed in the proposed project timeline. |

Conclusion:

Staff recommends that the City Council review the draft Tobacco Retailer Licensing Program provisions and provide direction to staff regarding the provisions, proposed project timeline and implementation plan. |

Attachment B

What is a “tobacco product” under California law?

California state law expanded the definition of tobacco products. A tobacco product is (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, (2) any electronic vaping device (whether or not it contains nicotine), or (3) any component, part, or accessory of a tobacco product, whether or not sold separately. For example, e-cigarettes, atomizers, vaping tanks or mods, and “e-liquid” or “e-juice” are tobacco products. But products like nicotine patches that the U.S. Food & Drug Administration has approved as cessation products or for other therapeutic purposes are not included.

[Business and Professions Code Section 22950.5 (d)]

Tobacco Products Include:



Cigarettes



Cigars



Little Cigars/Cigarillos



Smokeless Tobacco



Electronic Cigarettes



Vape Pens



E-liquids



Hookah



Vape Tanks/Mods



Vape Atomizer



Vaporizers



E-hookah